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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,371	04/25/2001	Diane C. Breidenbach		6561

7590 11/29/2005  
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EXAMINER

NGUYEN, TUAN N

ART UNIT PAPER NUMBER

3751

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species I: Fig. 2 in the reply filed on November 07, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The applicant further indicates that claims 1-31 and 40-50 are readable thereon; accordingly, claims 32-39 are hereby withdrawn from further consideration.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-31, 40 and 41 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 48-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "a rollerball" in line 2 of claim 48 appears to be a double inclusion of "a rollerball" in line 4 of claim 42; therefore, it is unclear as to the differences between them.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3751

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 4, 6, 7, 42 and 48-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Sakwa.

Sakwa discloses a dual ended container (see Fig. 4) comprising a sleeve (12) that has a first end (about 26) and a second end (about 28), each of the ends being adapted to receive a receptacle (about 16, about 50) for containing a product and wherein the product in the first receptacle is different from the product in the second receptacle and at least one of the receptacles has a rollerball applicator (14) for dispensing product from that receptacle. The sleeve has a first section and a second section which are connected by a sidewall (22), the first section and the second section being opened at each of said ends and is capable of receiving an opened end of a receptacle which contains a product. The sleeve and the receptacles have a cross section of the same shape, wherein the center axis of each end section is the same and wherein the center axis of the sleeve and each of the receptacles are the same.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3751

5. Claims 1-31 and 40-50 rejected under 35 U.S.C. 103(a) as being unpatentable over Roehrich in view of US Patent 5,586,694 (hereinafter Breidenbach), Costa, or Pieper et al. (hereinafter Pieper), or any combination thereof.

Roehrich discloses a dual ended container (see Fig. 1) comprising a sleeve (middle piece between the top and bottom piece) that has first and second ends, each of the ends being adapted to receive a receptacle (the top and bottom piece) for containing a product (such as perfume or the like) and wherein the product in the first receptacle could be different from the product in the second receptacle depend on the user wishes. The sleeve could obviously have a first section and a second section, which are connected by a sidewall (if not already) such that taught by Costa partition wall (1a). At least or only one of the receptacles can have a rollerball applicator (if not already) for dispensing product from that receptacle similar to the rollerball applicator of Breidenbach (see Fig. 5 of Breidenbach). The other claimed features such as the center axis and the cross section shape are clearly anticipated by Roehrich. Furthermore, the intended use with different product and all other functional phrases have been carefully considered but are deemed not to describe any structure patentably distinguishable over the device that disclosed by Roehrich which is certainly capable of being used in the claimed manner such as with a receptacle with a mascara brush as for example discloses by Costa or a doe foot applicator as for example discloses by Pieper.

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**Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Planka discloses another rollerball cosmetic applicator and Gueret discloses an applicator for different materials, which could also be powder.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Tuan Nguyen  
Primary Examiner  
Art Unit 3751  
11/28/05

TN